

RESOLUTION NO. 07-330

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED CONTRACT BETWEEN THE CITY AND CHEN AND ASSOCIATES FOR GENERAL AND UTILITY ENGINEERING SERVICES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 07-254, the City Commission selected six firms in response to RFQ No. 06-007, and authorized the City Manager to negotiate contracts with each firm, to be used on a task order basis, for general and utility engineering services; and

WHEREAS, contract negotiations between the City and Chen and Associates, one of selected firms, have been completed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

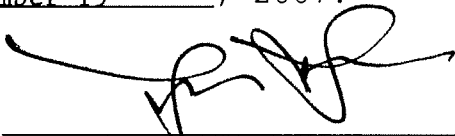
Section 1: That the attached contract between the City and Chen and Associates for general and utility engineering consulting services is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 18 day of September, 2007.

Authenticated by the presiding officer and Clerk of the Commission on September 19, 2007.

Filed with the Clerk September 19, 2007.

  
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MORGAN McPHERSON, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH CITY CLERK

# EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager

**FROM:** R.B. Havens, Manager Public Works  
Joe April, Director Engineering Services  
Doug Bradshaw, Port Operations Project Manager  
E. David Fernandez, Director General Services



**DATE:** September 6, 2007

**RE:** Approval of General Engineering and Utility Engineering Services Contracts with Chen and Associates, CH2M Hill, CDM Inc., and Perez Engineering and Development, Inc.

## **ACTION STATEMENT:**

Resolution approving the 3-year (with one 2-year option) General Engineering and Utility Engineering Services Contracts with Chen and Associates, CH2M Hill, CDM, Inc., and Perez Engineering and Development, Inc.

## **STRATEGIC PLAN:**

The improvement and maintenance of City infrastructure is critical to meeting the current and future needs of the citizens of Key West. Having enough engineering resources for all the City departments that have current and future projects planned assures smooth design, permitting and construction of multiple projects simultaneously.

## **BACKGROUND:**

The City has need of engineering firms of many different disciplines to help design, permit, repair and construct facilities of all types. These firms help staff prepare all kinds of projects like stormwater design, underground utilities, facilities design, dock/pier design, sewer facilities design/upgrades etc.

As the City has multiple departments that manage projects of all sizes and disciplines simultaneously, the City typically contracts with multiple engineering firms to handle the workload. Historically, the General Services Department (formally the Utilities Department) can keep two large engineering firms busy with design just to meet that department's project needs.

The six firms that the City had contracted with in 2002 have now expired and the hiring of new companies is necessary to continue smooth and efficient infrastructure projects. The City advertised RFQ#06-007 General and Utilities Engineering Services Consultants and received eleven proposals. The engineering disciplines requested in the RFQ were; Government Buildings and Facilities, Solid Waste Facilities, Sewer Facilities, Storm Water Facilities, Coastal Facilities and Environmental Engineering Services.

The City staff senior project managers met on Friday June 29, 2007 at a publicly advertised meeting to discuss the qualifications and ranking of the proposers. Staff considered the

proposal companies resources, management team resumes and experience, Proposers relevant project experience, phone references from former or current clients, current financial condition and other factors to complete the ranking.

Staff selected six firms that were forwarded to the City Commission for approval of continuing engineering services contracts. The contracts would be good for three years with a two year option. Staff has selected three large firms with the ability to handle multiple disciplines for large projects and three smaller firms that specialize in one or two disciplines that are needed for smaller projects. The City Commission approved this ranking at its July 17, 2007 meeting (Resolution # 07-254)

The six firms selected in the order of their ranking by staff are:

- Chen and Associates Consulting Engineers Inc.
- CH2MHill Inc.
- Camp Dresser & McKee Inc. (CDM Inc.)
- Perez Engineering & Development Inc.
- Hans Wilson & Associates Inc.
- G.M. Selby Inc.

Staff has completed contract negotiations with four of these firms; Chen & Assoc., CH2M Hill, CDM Inc., and Perez Engineering. The contracts for Hans Wilson & Associates and GM Selby, Inc. will appear as a resolution on a future City Commission agenda.

#### **OPTIONS / ADVANTAGES / DISADVANTAGES:**

**Do Not Approve the Resolution.** This option is not recommended by staff. Continuing engineering contracts with multiple firms has been one of the key ingredients in the City's ability to complete multiple large and small projects simultaneously. Having several firms on contract assures all the project managers that plenty of qualified engineering resources are available regardless of project size or scope, without having to advertise a separate RFQ for every individual project. This makes project management much more efficient for the City saving much time, resources and money.

**Approval of the Resolution.** This option is recommended by staff. Having the engineering resources that each department needs is the most crucial component of successful project management. Having these four firms under contract will assure that the City has engineering resources for multiple disciplines when needed for any size project.

#### **FINANCIAL IMPACT:**

Although there is no direct cost related to contracting the firms, having multiple firms under contract has helped the City facilitate grant awards and meeting grant deadlines. No tasks or minimum amount of work will have to be assigned under the contracts. The cost of services for any particular project will be based on the amount of effort to complete the task assigned and the contract Per Diem Rates.

#### **RECOMMENDATION:**

Staff recommends the approval of the Resolution.



**CITY OF KEY WEST  
CIVIL SERVICE BOARD  
(305) 809-3770**

AGENDA

CITY OF KEY WEST CIVIL SERVICE BOARD  
SEPTEMBER 19, 2007, 5:30 P.M.  
OLD CITY HALL - SIDE CONFERENCE ROOM  
510 GREENE STREET

- I. MEETING CALLED TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. APPROVE MINUTES OF APRIL 18, 2007 MEETING
- V. NEW BUSINESS
  - A. FIRE EXAMINATION – DAVID ZARATE REGISTRATION
  - B. RATIFY FIRE SCORES - JULY 11, 2007 PROMOTIONAL EXAMINATIONS
  - C. POLICE EXAMINATION – OFC. DONNY BARRIOS REQUEST FOR SPECIAL MEETING RE PROMOTIONAL ELIGIBILITY
  - D. POLICE EXAMINATION – ELIGIBILITY OF RICHARD THOMAS
  - E. POLICE EXAMINATION – ROBERT ALLEN REGISTRATION
  - F. RATIFY POLICE SCORES – JULY 25, 2007 PROMOTIONAL EXAMINATIONS
  - G. AMENDMENT OF CSB RULES AND REGULATIONS
  - H. NEXT MEETING DATE – WEDNESDAY, OCTOBER 17, 2007
  - I. GENERAL PERSONNEL ISSUES
- VI. OTHER BUSINESS
- VII. ADJOURNMENT

IF ANYONE DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS TIME OR HEARING, HE/SHE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. (FLORIDA STATUTE SECTION 286.0105)

CITY OF KEY WEST

MASTER AGREEMENT TO FURNISH  
GENERAL ENGINEERING AND UTILITY  
ENGINEERING SERVICES

TO THE  
CITY OF KEY WEST

AUGUST 2007

Consulting Engineers:

Chen & Associates Consulting Engineers Inc.  
420 Lincoln Road  
Suite 700  
Miami Beach, Florida 33139

# Master Agreement to Furnish General Engineering Services to the City of Key West

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This AGREEMENT made and entered into by and between the City of Key West, a municipal corporation of the State of Florida, whose address is 525 Angela Street, Key West, Florida 33040, hereafter referred to as the "CITY" and Chen & Associates Consulting Engineers Inc. a Florida corporation, whose address is 420 Lincoln Road, Suite 700, Miami Beach, Florida 33139, hereafter referred to as the "ENGINEER". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 6.1.

## Article 1. Scope of Services

The ENGINEER'S primary responsibilities include but are not limited to providing consulting, professional and construction services relating to the City's professional engineering, construction, economics, planning, specialty consulting and any other lawful professional engineering or other consulting services which the ENGINEER is qualified to provide and which the CITY authorizes the ENGINEER to undertake in connection with the CITY's present and planned activities in the areas identified below. The specific services, which the ENGINEER agrees to furnish are set forth as follows:

- 1.1 Provide comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the CITY with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofit of CITY facilities and buildings.
- 1.2 Provide comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the CITY with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofit of solid waste facilities.
- 1.3 Provide comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the CITY with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofit of storm water facilities and structures.

- 1.4 Provide comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the CITY with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofit of sewer facilities and structures.
- 1.5 Provide comprehensive full-scale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the CITY with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, construction administration and owner project representation services relating to operation, construction, permit modification, rehabilitation and/or retrofit of coastal facilities including docks, marinas, seawalls, bridges, erosion control, beach design and beach re-nourishment.
- 1.6 Provide comprehensive environmental engineering services for fullscale engineering, design, surveying, permit preparation, preparing contract specifications, preparing bid and proposal documents and assisting the CITY with technical review and ranking of the same to attain qualified contractors for work, environmental assessments, sampling, analysis and monitoring, construction administration and owner project representation services relating to operation, new construction, permit modification, construction improvements, rehabilitation and or retrofit lands and facilities.

Engineer shall provide the above-mentioned Scope of Services as tasked by the CITY for the projects specifically identified in RFQ No. 06-007 and any other tasks as assigned under this scope. The terms that the ENGINEER agrees to follow are set forth as follows:

- 2.1 The specific services to be provided by the ENGINEER and the compensation for such services will be as mutually agreed to in separate Task Orders to this AGREEMENT. Each Task Order when fully executed shall become a supplement to and a part of this AGREEMENT.
- 2.2 Unless otherwise indicated in a Task Order, execution of a Task Order by the CITY shall constitute authorization for the ENGINEER to proceed with the services enumerated in the Task Order. Each Task Order will be supported by appropriate cost and pricing data and such other documentation as required by the CITY.
- 2.3 Task Orders shall be numbered consecutively. Each Task Order shall include a description of the scope of services, time of completion, total estimated costs of services, and method of compensation. Additional information shall be provided to the CITY if required. Amended Task Orders shall include substantially the same information and be submitted to the CITY for approval.
- 2.4 The CITY may make or approve changes within the general Scope of Services in any Task Order. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to the Task Order.



- 2.5 A task order may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to ENGINEER. No further work will be performed by ENGINEER upon receipt of this notice unless specifically authorized by the Director of Utilities of the City of Key West.

On termination, the ENGINEER will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the Task Order. The CITY will not pay for anticipatory profits.

- 2.6 The ENGINEER will provide ADDITIONAL SERVICES mutually agreed to and authorized by the CITY in writing but not specifically described and authorized by a Task Order.

## **Article 2. Compensation**

As consideration for providing the services enumerated in Article 1 and supplemental Task Orders, the CITY shall pay the ENGINEER fees as defined in each Task Order.

Field rates as identified in Exhibit A shall be applicable when the ENGINEER's employees are assigned to a field location for a continuous period exceeding 90 calendar days. Field location is defined as office space which is made available to ENGINEER's employees by the CITY at no cost to the ENGINEER. Field rates shall be applied on the first day the ENGINEER's employee is assigned to a field location. Should the ENGINEER's employee assignment not exceed 90 continuous calendar days, ENGINEER shall be permitted to retroactively reinvoice for the applicable field rate charges but based upon the ENGINEER's per diem rates.

The types of compensation methods which shall be used to pay for the ENGINEER's services are limited to the following:

- 2.1 Lump sum payment, which includes compensation for all the ENGINEER'S salaries, general overhead costs, direct expenses, and profit.
- A. The lump sum is based on immediate authorization to proceed and timely completion of the PROJECT. If the PROJECT timing deviates from the assumed schedule for causes beyond ENGINEER's control, ENGINEER and/or the CITY reserves the right to request renegotiation of those portions of the lump sum affected by the time change.
  - B. In the event of a change of scope, an appropriate decrease or increase in compensation will be authorized in writing.
  - C. Monthly invoicing will be based on an estimate of the percent complete at the end of the preceding month.
  - D. The ENGINEER shall submit wage rates and other actual unit costs supporting the compensation. The ENGINEER shall submit a Truth in Negotiation Certificate stating that all data supporting the compensation is accurate, complete, and current at the time of contracting.

## 2.2 Cost Reimbursable-Per Diem (Time and Expenses)

- A. Hourly Per Diem Rates are provided in Exhibit A to this Agreement. Per Diem Rates are those hourly rates charged for work performed on the PROJECT by ENGINEER's employees of the indicated classifications and include all salaries, overheads, and profit, but do not include allowances for Direct Expenses. These rates are subject to fiscal year adjustments and shall be based on the Data Resources, Inc. (DRI) forecast of wage and price escalation.
- B. A budgetary amount will be established for each Task Order. This budgetary amount shall not be exceeded unless prior written approval is provided by the CITY. ENGINEER will make reasonable efforts to complete the work within the budget and will keep CITY informed of progress toward that end so that the budget or work effort can be adjusted if found necessary.
- C. ENGINEER is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is CITY obligated to pay ENGINEER beyond these limits.
- D. When any budget has been increased, ENGINEER's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
- E. The CITY shall pay for reimbursable expenses invoiced at the actual cost of expenditures incurred by the ENGINEER. Direct expenses are those necessary costs and charges incurred for the PROJECT including, but not limited to: 1) the costs of express courier charges, mail, supplies and field equipment incurred directly for the PROJECT, printing and reproduction of drawings, documents, and other material, laboratory tests and analyses, and subcontracts and other outside services; and 2) ENGINEER's standard project charges for CADD and specifications computing services, special health and safety requirements of OSHA and telecommunication services; and 3) the costs of travel, including the use of ENGINEER's vehicles, subsistence, lodging and related expenses of personnel while traveling in connection with the PROJECT in accordance with CITY policy and Florida Statute FS 112.061. Required Documentation: All requests for travel reimbursement must provide enough detail to clearly indicate the reason (s) for travel, date (s) of travel, exact time (s) of travel, and mode (s) of travel. If travel is by privately owned vehicle, exact mileage traveled with odometer readings must be submitted. All receipts for which reimbursement is requested are subject to Florida Statute rates applicable at the time of travel. ENGINEER is obligated to minimize all expenses incurred in the execution of this AGREEMENT and subsequent Task Orders.
- F. All reimbursement requested must be supported by a receipt except where a receipt could not be obtained such as an unattended toll booth or parking meters. In those situations where receipts cannot be obtained, reimbursement requested must be supported by documents that show dates, parking meter numbers and locations, toll booth locations, and signature of employee. Travel, in connection with the work and for convenience of ENGINEER (to make use of talent not located in Monroe County), shall be included in ENGINEER'S Task Order. Travel requested by CITY'S AUTHORIZED REPRESENTATIVE and

travel associated with permitting and grants, as required by state and federal agencies, will be reimbursed in accordance with this section.

- G. Transportation by passenger vehicles supplied by ENGINEER in connection with the work will be reimbursed in accordance with Florida Statute 112.061. Required Documentation: Mileage log stating point of departure, point of destination, and odometer reading for both.

### **Article 3. Invoicing and Payment**

Monthly invoices will be issued by ENGINEER for all work performed during the preceding month under this AGREEMENT, as prescribed in Article 2. Invoices are to be submitted and paid in accordance with the Florida Prompt Payment Act.

### **Article 4. Obligations of the Engineer**

#### 4.1. General

- A. The ENGINEER will serve as CITY'S professional representative under this AGREEMENT, providing professional engineering and related consultation and advice and furnishing customary services incidental thereto.

#### 4.2. Standard of Care

- A. The standard of care applicable to ENGINEER's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time said services are performed. The ENGINEER will perform any services not meeting this standard without additional compensation.

#### 4.3. Subsurface Investigations

- A. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics and the location of underground features may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

#### 4.4. Engineer's Personnel at Construction Site

- A. The presence or duties of the ENGINEER's personnel at a construction site, where the contractor is other than CH2M HILL, whether as onsite representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the Contract Documents and any health or

safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity(s) or any other persons at the site except ENGINEER's own personnel.

- B. The presence of ENGINEER's personnel at the construction site is for the purpose of providing the CITY a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). ENGINEER neither guarantees the performance of the construction contractor(s) nor assumes responsibilities for Contractor'(s) failure to perform their work in accordance with the Contract Documents.
- C. Construction sites include places of manufacture for materials incorporated into the construction work. Construction contractors include manufacturers of materials incorporated into the construction work.

#### 4.5. Opinions of Cost, Financial Considerations, and Schedules

- A. In providing opinions of construction cost, financial analyses, economic feasibility projections, and schedules for design projects, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY'S actual PROJECT costs, financial aspects, economic feasibility or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.
- B. If CITY wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, CITY will employ an independent cost estimator, contractor, or other appropriate advisor.

#### 4.6. Construction Progress Payments

- A. Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that exhaustive, continuous or detailed examinations or reviews have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the contract documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment

has passed to CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CITY and the construction contractor that affect the amount that should be paid.

4.7. Record Drawings

- A. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, including the CITY or contractors for the work, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.
- B. Record drawings will consist only in hard copy form. Any computer-generated files on diskettes or tapes furnished by ENGINEER are for the CITY's and other's convenience and are to be utilized at users sole risk. Record Drawings will be signed and sealed were applicable based on CITY and/or regulatory requirements.

4.8. Access to Engineer's Accounting Records

- A. The ENGINEER will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. These records will be available to CITY during ENGINEER's normal business hours for a period of 1 year after ENGINEER's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may only audit accounting records applicable to cost-reimbursable and cost plus fixed fee type compensation.

4.9 Engineer's Insurance

- A. The ENGINEER will maintain throughout this AGREEMENT the following insurance:
  - 1. Worker's compensation and employer's liability insurance as required by the state where the work is performed.
  - 2. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$1,000,000 combined single limits.

3. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the ENGINEER or of any of its employees, agents, or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
4. Professional liability insurance of \$2,000,000 per occurrence and in the aggregate
5. CITY will be named as an additional insured with respect to ENGINEER's liabilities hereunder in insurance coverage's identified in items 2 and 3, and ENGINEER waives subrogation against CITY as to said policies.

4.10 Subconsultants

- A. The ENGINEER may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.

## **Article 5. Obligations of the City**

5.1. Authorization to Proceed

- A. Authorization to proceed will be considered to be given upon execution of each Task Order by the CITY.

5.2. City-Furnished Data

- A. The CITY will provide to the ENGINEER all data in the CITY'S possession relating to the ENGINEER's services on the PROJECT including, but not limited to, information on any pre-existing. ENGINEER will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

5.3. Access to Facilities and Property

- A. The CITY will make its facilities accessible to ENGINEER as required for ENGINEER's performance of its services and will provide labor and safety equipment as required by ENGINEER for such access. CITY will perform, at no cost to ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY'S facilities as may be required in connection with ENGINEER's services, unless otherwise agreed to. CITY will be responsible for all acts of CITY'S personnel.

5.4. Advertisements, Permits, and Access

- A. Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses, except those required by the bid documents, required by local, state, province, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

5.5. Timely Review

A. The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

5.6. Prompt Notice

A. The CITY will give prompt written notice to ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the work of the ENGINEER or construction contractors.

5.7 Contractor Indemnification and Claims

A. CITY agrees use its best efforts to include the following in all construction contracts with contractors not affiliated with ENGINEER:

1. The provisions of Article 4.4, Engineer's Personnel at Construction Site
2. Provisions providing contractor indemnification of CITY and ENGINEER as additional insureds on the contractor's general liability insurance policy

B. CITY will use its best efforts to require construction contractor(s) to name CITY and ENGINEER as additional insureds on the contractor's general liability policy

5.8. Exclusion of Contractor Claims

A. CITY agrees to use its best efforts to include the following clauses in all contracts with other construction contractors and equipment or material suppliers:

Contractors, subcontractors, and equipment and material suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, affiliated corporations, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed, unless construction contractors, subcontractors and equipment or material suppliers first gain the CITY's consent.

5.9. City's Insurance

A. CITY will maintain property insurance on all pre-existing physical facilities associated in any way with the PROJECT.

- B. CITY will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all PROJECT work, including the value of all onsite CITY-furnished equipment and/or materials, associated with the ENGINEER's services.

5.10 Services of Engineer

- A. Unless this AGREEMENT is modified or terminated, the CITY will have all services specified in this AGREEMENT performed by the ENGINEER, employing ENGINEER's standard form and content of drawings, specifications, and Contract Documents, generally conforming to the standards, recommendations, and content of the Construction Specifications Institute (CSI) and Engineers Joint Contract Documents Committee (EJCDC), and subject to the CITY's review and approval.

5.11 Litigation Assistance

- A. The Scope of Services does not include costs of ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of ENGINEER by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate Task Order, and payment for such services shall be in accordance with Article 3, unless and until there is a finding by a court or arbitrator that ENGINEER's sole negligence caused CITY's damage.

## **Article 6. General Legal Provisions**

6.1 Agreement Period

- A. The duration of the agreement shall be three (3) years commencing from the date this Agreement was entered into, with an additional two-year option to extend on behalf of the CITY, which must be approved by Resolution of the City Commission. This Agreement shall continue in effect from year to year thereafter, until terminated by the CITY.

6.2. Reuse of Project Documents

- A. Reports, drawings, specifications, documents and other deliverables of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for the project of the City. All specifications and plans shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY agrees to indemnify and defend the ENGINEER and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to such unauthorized reuse, change, or alteration.



### 6.3 Ownership of Work Product and Inventions

- A. All of the work product of ENGINEER in executing this Project shall remain the property of ENGINEER. The CITY shall receive a perpetual, royalty-free, non-transferable, non-exclusive license to use the deliverables for the purpose for which they were intended. Any inventions, patents, copyrights, computer programs or other intellectual property developed during the course of, or as a result of, the Work shall remain the property of the ENGINEER.

### 6.4 Force Majeure

- A. The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER.
- B. In the event of a delay that results in additional costs to the ENGINEER, an appropriate increase in compensation and schedule will be authorized in writing.

### 6.5 Termination

- A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to ENGINEER. No further work will be performed by ENGINEER upon receipt of this notice unless specifically authorized by the Director of Utilities of the City of Key West.
- B. On termination, the ENGINEER will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits

### 6.6 Suspension, Delay, or Interruption Of Work

- A. The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay ENGINEER for work performed to date. An equitable adjustment in the PROJECT'S schedule and ENGINEER's compensation will be made as agreed to by both parties.
- B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

### 6.7 Third Party Beneficiaries

- A. This Agreement gives no rights or benefits to anyone other than the CITY and ENGINEER and has no third party beneficiaries. ENGINEER's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project.

- B. All work products will be prepared for the exclusive use of CITY for specific application to the property described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of ENGINEER. Any unauthorized assignment of related work product shall be void and unenforceable.

#### 6.8 Indemnification

- A. The ENGINEER shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of ENGINEER, its employees or agents, in the performance of this Agreement.
- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, ENGINEER shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The ENGINEER shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by ENGINEER, or by persons employed or used by ENGINEER.
- C. In no event shall ENGINEER, its affiliated corporations, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of revenue or profits, suffered or incurred by CITY or any of its agents, including other contractors engaged at the project site, as a result of this Agreement or ENGINEER's performance or non-performance of services pursuant to this Agreement. Limitations of liability provided in this paragraph apply whether the liability is claimed to arise in contract, tort (including negligence), strict liability, or otherwise.

#### 6.9 Limitation of Liability

- A. ENGINEER services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- B. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it.
- C. This limitation of liability will apply whether ENGINEER's liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include ENGINEER's officers, affiliated corporations, employees, and subcontractors.

6.10 Assignment

A. ENGINEER shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

6.11 Jurisdiction

A. The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

6.12 Severability and Survival

A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

B. ARTICLES 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.13 Dispute Resolution

A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.

B. Unless otherwise agreed in writing, the ENGINEER shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the engineer continues to perform, Owner shall continue to make payments in accordance with this Agreement.

**Article 7. Schedules, and Signatures**

This AGREEMENT, including its Schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

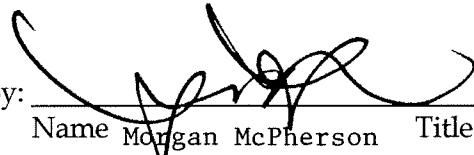
IN WITNESS WHEREOF, the parties execute below:

For the CITY, Mayor Morgan McPherson

Dated this 1st day of October, 2007.


By: \_\_\_\_\_  
Name Title

By: \_\_\_\_\_  
Name Title

By:  \_\_\_\_\_  
Name Morgan McPherson Title Mayor

For the ENGINEER, CHEN & ASSOCIATES CONSULTING ENGINEERS, Inc.

Dated this 9th day of September, 2007.

By:  \_\_\_\_\_  
Name Title

**EXHIBIT A**

<b>Classification</b>	<b>Per Diem Rate (\$ per day)</b>	<b>Field Rate (\$ per day)</b>
Project Director	\$1,385	
Project Manager	\$1,229	
Chief Engineer	\$1,084	
Senior Engineer	\$1,078	
Project Engineer	\$760	
CADD Designer	\$610	
Engineer Intern	\$409	
Clerical	\$415	
Senior Inspector	\$930	\$622
Inspector	\$774	\$712
Senior Landscape Architect	\$786	
Landscape Architect Intern	\$469	
Project Surveyor (PLS)	\$1,123	
Survey Supervisor	\$699	
Survey Technician	\$711	
Draftperson	\$569	
Party Chief	\$514	
Instrument Person	\$316	
Rodperson	\$221	
Chief Architect	\$1,386	
Chief Architect	\$1,386	
Architect Project Manager	\$1,028	
Project Architect	\$704	
CADD Technician (Arch)	\$522	
Sr. Electrical Engineer	\$1,397	
Electrical Engineer	\$954	
Sr. Mechanical Engineer	\$1,285	
Mechanical Engineer	\$868	

Effective Thru September 30th, 2007

*OB*  
*9/6/07*

**EXHIBIT A**

<b>Classification</b>	<b>Per Diem</b>	
	<b>Rate</b> (\$ per day)	<b>Field Rate</b> (\$ per day)
Project Director	\$1,480	
Project Manager	\$1,240	
Chief Engineer	\$1,104	
Senior Engineer	\$1,080	
Project Engineer	\$840	
CADD Designer	\$680	
Engineer Intern	\$360	
Clerical	\$424	
Senior Inspector	\$1,080	\$622
Inspector	\$800	\$712
Senior Landscape Architect	\$818	
Landscape Architect Intern	\$488	
Project Surveyor (PLS)	\$1,168	
Survey Supervisor	\$727	
Survey Technician	\$740	
Draftperson	\$600	
Party Chief	\$534	
Instrument Person	\$329	
Rodperson	\$230	
Chief Architect	\$1,442	
Architect Project Manager	\$1,069	
Project Architect	\$732	
CADD Technician (Arch)	\$543	
Sr. Electrical Engineer	\$1,452	
Electrical Engineer	\$993	
Sr. Mechanical Engineer	\$1,336	
Mechanical Engineer	\$903	

Effective Thru September 30th, 2008

*Q13*  
*9/6/07*